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8 **Attorney for Defendant Dongbu Insurance Company, Ltd.**

9 **IN THE UNITED STATES DISTRICT COURT FOR THE**
10 **NORTHERN MARIANA ISLANDS**

11 **JUNG SOON LEE (deceased), by**
12 **SUNG YOUNG LEE, Personal**
13 **Representative**

14 **Plaintiff,**

15 **v.**

16 **DONG GUK CORPORATION,**
17 **and DONGBU INSURANCE**
18 **COMPANY, LTD.**

19 **Defendants.**

20 **Civil Action No. 05-0031**

21 **DEFENDANT DONGBU**
22 **INSURANCE COMPANY,**
23 **LTD.'S**
24 **FIRST AMENDED ANSWER**
25 **AND DEFENSES TO**
26 **FIRST AMENDED**
COMPLAINT, AND CROSS-
CLAIM

ANSWER

Defendant Dongbu Insurance Company, Ltd. ("Dongbu") states as follows in answer to Plaintiff's First Amended Complaint ("Complaint"):

1. Dongbu is without information sufficient to plead to the truth or falsity of the averments in Paragraphs 1 through 3, inclusive, and on that basis, denies same.
2. Dongbu denies the averments in Paragraph 4 as written, except that Dongbu admits it was authorized to conduct insurance business in the Commonwealth at all times relevant to the Complaint.

1 3. In answer to Paragraph 5, Dongbu incorporates herein as if set forth in full its answers
2 to the previous Paragraphs of the Complaint.

3 4. Dongbu is without information sufficient to plead to the truth or falsity of the
4 averments in Paragraphs 6 through 20, inclusive, and on that basis, denies same.

5 5. In answer to Paragraph 21, Dongbu incorporates herein as if set forth in full its answers
6 to the previous Paragraphs of the Complaint.

7 6. In answer to Paragraph 22, Dongbu admits that it issued an insurance policy to Dong
8 Kuk Corporation, but Dongbu denies that there is any coverage under the applicable
9 policy for the claims set forth in the Complaint.

10 7. Dongbu denies the averments in Paragraph 23.

11 8. Dongbu denies any averments in the Complaint to which it has not specifically
12 responded, above.

13 9. Dongbu denies that Plaintiff is entitled to any of the relief sought in the Complaint.
14

15 **DEFENSES**

16
17 1. Plaintiff fails to state a claim upon which relief can be granted in that none of the claims
18 fall within the policy that Dongbu issued to Dong Kuk Corporation including without
19 limitation because the policy has a "dram shop" exclusion for any claims in connection
20 with the selling or providing of alcoholic beverages and the claims in the Complaint
21 arise solely out of same.

22
23 2. Based on the allegations in the Complaint, the Plaintiff assumed the risk and had the last
24 clear chance to avoid the accident in that the decedent was a voluntary passenger in the
25 vehicle of an obviously intoxicated person.
26

- 1 3. Based on the allegations in the Complaint, Plaintiff's claims are barred in whole or in
2 part by the illegal conduct of the decedent in jointly receiving with the driver of the
3 vehicle alcoholic beverages after hours.
- 4 4. Based on the allegations in the Complaint, the accident made the basis of the Complaint
5 was caused by a third party, i.e. the operator of the vehicle, over whom neither Dong
6 Kuk Corporation nor Dongbu had any control.
- 7 5. Plaintiff's claims are barred in whole or in part by the statute of limitations and/or bar
8 on directly naming an insurer as a Defendant.
- 9 6. Dongbu incorporates herein by reference any affirmative defense claimed by Defendant
10 Dong Kuk Corporation in its answer to the Complaint.
- 11 7. Dongbu reserves the right to add additional defenses as the case proceeds.

12
13 **CROSS-CLAIM**

- 14 1. This cross-claim is brought by Dongbu against Defendant Dong Kuk Corporation to
15 establish that there is no coverage under the applicable insurance policy in
16 connection with the accident made the basis of the lawsuit.
- 17 2. Jurisdiction is proper in this Court because the lawsuit is already in this Court.
18 Jurisdiction is also vested in this Court pursuant to 28 U.S.C. §2201 with respect to
19 declaratory judgments and declaratory relief provided therein and pursuant to Rule
20 57 of the Federal Rules of Civil Procedure in that there is an actual controversy
21 between these parties with respect to matters alleged hereinafter which requires the
22 interposition of this Court.
- 23 3. Dongbu is now and at all times relevant to this lawsuit has been a corporation duly
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25
26

1 organized and existing under the laws of the Republic of Korea, and registered,
2 authorized and engaged in the insurance business and authorized to issue insurance
3 policies in the Commonwealth of Northern Mariana Islands.

- 4 4. Defendant Dong Kuk Corporation (sometimes transliterated as Dong Guk
5 Corporation) dba Fresh Sashimi House ("DKC") is now and at all times relevant to
6 this lawsuit has been a corporation duly organized and existing under the laws of the
7 Commonwealth of the Northern Mariana Islands, with its principal place of business
8 in Saipan.
9
- 10 5. Effective June 4, 2004, Dongbu issued a renewal of an insurance policy with named
11 insureds DKC and Mr. Han, Kook Ban Jun ("Mr. Han"), and with policy No. KBO-
12 00051-S01 (the "Policy"). The Policy term was from June 4, 2004 through June 3,
13 2005.
14
- 15 6. The Policy is a valid, binding insurance contract between Dongbu, on the one hand,
16 and DKC and Mr. Han, on the other hand.
- 17 7. Dongbu is the insurer under the Policy.
- 18 8. DKC and Mr. Han are the named insureds under the Policy.
- 19 9. The Policy's declarations page, issued as part of the June 4, 2004 renewal, identifies
20 the Policy as a "BUSINESSOWNERS POLICY."
21
- 22 10. The schedule of the declarations page shows that there are two types of coverage
23 provided. As more particularly stated therein, one is property coverage and the other
24 is liability coverage.
- 25 11. The Policy's comprehensive single limit for the liability coverage is \$300,000.
26

1 12. The Policy is subject to all terms and conditions in the Policy, including all
2 amendments and endorsements.

3 13. As more particularly stated in the pleadings on file in this case, the Plaintiff claims
4 that on or about August 2, 2004, DKC negligently and illegally served alcoholic
5 beverages to Jung Soon Lee and others as customers, that they became intoxicated
6 and that an automobile accident resulted in which Jung Soon Lee was killed.

7
8 14. At the present time, there is an actual controversy between the parties with respect to
9 whether there is any duty to defend, indemnify or otherwise provide coverage under
10 the Policy in connection with the claims brought in the lawsuit.

11 15. Dongbu specifically alleges that there is no coverage under the Policy because the
12 Policy's dram shop exclusion (Business Owner's Policy coverage form, Section II,
13 Business Liability Coverage, Paragraph B(1)(c) at page 23) clearly excludes
14 coverage for any claim in connection with causing or contributing to the intoxication
15 of any person, furnishing alcoholic beverages to anyone under the influence of
16 alcohol or providing alcoholic beverages in violation of the applicable law.

17
18 16. The lawsuit's complaint only states one "cause of action" against DKC, and that is
19 for serving alcoholic beverages after hours in violation of the law and for serving
20 alcoholic beverages to apparently intoxicated customers.

21
22 17. Therefore, the dram shop exclusion applies precisely to the only claims in the
23 lawsuit.


24 18. This means that the Policy provides no coverage for the claims brought in the
25 lawsuit.
26

1 19. Dongbu also alleges that the Policy does not, and cannot under Commonwealth law
2 or public policy, provide any coverage for willful violations of law such as serving
3 alcoholic beverages after hours.

4 20. Wherefore, Dongbu prays for judgment on its cross-claim as follows:

- 5 a. For a declaration by this Court of the rights and obligations of the parties under the Policy;
6 b. For judgment discharging Dongbu from any obligation under the Policy with respect to the
7 lawsuit;
8 c. For its costs, disbursements and attorney's fees incurred herein; and
9 d. For such and other further relief as the Court deems just and proper.
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11 Respectfully submitted this 21st day of February, 2007.

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14 THOMAS E. CLIFFORD
15 Counsel for Dongbu
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